S.B. Civil Writ Petition No.3825/2007
Ramnarayan & Ors.
vs
Tehsildar, Deendwana & Anr.

Date of order : 17.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr. GR Punia, for the petitioners.
Mr. Narendra Moolchandani, Dy. GA.

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Heard learned counsel for the parties.

The trial court granted injunction in favour of the petitioners vide order dated 21st Dec., 2006. The appellate court modified this order and ordered that the petitioners shall not be dispossessed from the land in dispute without following the due process of law. The trial court relied upon the Patta set up by the plaintiffs whereas the appellate court was of the view that at this stage, it cannot be determined whether the land in question for which injunction has been sought by the plaintiff is fully covered by the Patta. The appellate court observed that this issue can be decided by the Tehsilder under the provisions of Section 91 of the Rajasthan Land Revenue Act and in case, any order is passed against the petitioners-plaintiffs then they may prefer appeal and get the relief.

The observation of the appellate court is on the face of it absolutely illegal because of the reason

that when plaintiffs filed the suit in civil court and are seeking injunction on the basis of their title then it cannot be made dependent upon the proceedings under Section 91 of the Rajasthan Land Revenue Act and civil court is required to determine the question of fact whether the land is covered by the Patta of the plaintiffs or not. Therefore, in fact, the appellate court virtually declared the proceedings under Section 91 of the Rajasthan Land Revenue Act as substitute to the suit.

In view of the above reasons, the writ petition of the petitioners deserves to be allowed, hence, allowed and the order passed by the appellate court virtually permitting the revenue authorities to initiate proceedings for eviction of the petitioners during the pendency of the suit cannot be permitted, hence, it is ordered that the petitioners shall not be dispossessed from the land in dispute during the pendency of the suit.

(PRAKASH TATIA), J.

c.p.goyal/-